

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

359B0421

HOUSE AGRICULTURE AND NATURAL
RESOURCES COMMITTEE ENGROSSED NO.
SB172 - 2/20/98

Introduced by: Senators Frederick, Drake, Ham, and Johnson (William) and Representatives
Duxbury, Crisp, Diedrich, Lee, and Weber

1 FOR AN ACT ENTITLED, An Act to establish a sheep checkoff program.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Assessment," a per head fee collected on the sale of all varieties of sheep in South
5 Dakota;

6 (2) "Council," the South Dakota Sheep Enhancement Council;

7 (3) "Participating seller," any person who owns or operates an agricultural producing or
8 growing facility for sheep and shares in the profits and risks of loss from such
9 operation, and who produces sheep in South Dakota during the current or preceding
10 marketing year, and has not requested a refund from the payment of assessments on
11 sheep production under this Act for a particular year;

12 (4) "Purchaser," any person who buys, accepts for shipment, accepts for consignment,
13 brokers, order buys, or otherwise acquires sheep from a grower;

14 (5) "Secretary," the secretary of the Department of Agriculture.

1 Section 2. There is hereby established the South Dakota Sheep Enhancement Council. The
2 council shall be composed of five members who shall be participating sellers. The initial members
3 shall be appointed by the secretary from a list of recommendations provided by South Dakota
4 sheep producers. The terms of members are three years; the initial appointments shall be for
5 staggered terms. The secretary is an ex officio, nonvoting member of the council.

6 Section 3. Each successor to the initial members shall be elected by the participating sellers
7 under rules promulgated pursuant to chapter 1-26 by the council.

8 Section 4. If a member of the council ceases to be a participating seller or resigns from office
9 before the expiration of the member's term, the secretary shall appoint a successor for the
10 balance of the term of office vacated.

11 Section 5. The council shall annually elect a chair and a vice chair. A majority of voting
12 members constitutes a quorum. All meetings of the council shall be called by the chair except that
13 special meetings may be called by three members of the council. The council shall adopt
14 procedures for the calling of special meetings.

15 Section 6. The council may:

- 16 (1) For purposes related to the sheep industry, enter into contracts, including loans and
17 grants, and cooperate with any person, any local, state, or national organization,
18 whether public or private, or with any governmental department or agency for the
19 discovery, promotion, development, and expansion of domestic and export markets
20 and industries and for research, protection, education, transportation, predator
21 control, and health issues;
- 22 (2) Expend the funds collected pursuant to this Act and appropriated for its
23 administration;
- 24 (3) Appoint, employ, discharge, fix compensation for, and prescribe the duties of such
25 personnel as it may deem necessary;

- 1 (4) Accept donations of funds, property, services, or other assistance from public or
- 2 private sources for the purpose of furthering the objectives of the council;
- 3 (5) Lease, purchase, own, maintain, operate, and dispose of equipment and supplies
- 4 necessary to carry out the provisions of this Act.

5 Section 7. The council shall promulgate rules pursuant to chapter 1-26 concerning:

- 6 (1) The procedures for obtaining a declaratory ruling;
- 7 (2) The procedures for assessments collected for sheep sold to a purchaser;
- 8 (3) The procedures for obtaining a refund of the assessment;
- 9 (4) The procedures for collecting delinquent assessments and assessing penalties;
- 10 (5) The record-keeping and reporting requirements of purchasers.

11 Section 8. An assessment of twenty cents per head is imposed by the council upon each

12 group of ten or more head of sheep sold in the state by a South Dakota resident. However the

13 council may enter into reciprocal agreements with other states that also have a sheep checkoff

14 fee to remit the assessment to the state where the sheep were grown.

15 Section 9. Any purchaser of ten head or more of sheep shall collect the assessment imposed

16 by this Act by deducting the assessment from the purchase prices of all sheep subject to the

17 assessment.

18 Section 10. Moneys collected from checkoff fees shall be deposited in a special revolving

19 fund created in the state treasury and are continuously appropriated to the council.

20 Section 11. Any purchaser shall keep a permanent record for three years of all purchases of

21 sheep, which may be examined by the council at any reasonable time. Every purchaser shall

22 report to the council stating the seller and quantity of sheep. The report and remittance of the

23 assessment shall be made at the times and in the manner prescribed by the council pursuant to

24 rules promulgated by the council pursuant to chapter 1-26.

25 Section 12. If a purchaser disputes an assessment made under this Act, the purchaser may

1 appeal to the council, which shall conduct a hearing and resolve the matter pursuant to the
2 contested case provisions of chapter 1-26. If a purchaser fails to remit the assessment provided
3 in this Act, the council may enforce collection in any appropriate court within this state.

4 Section 13. Within one hundred eighty days following the assessment, any seller subject to
5 the assessment provided in this Act may apply to the council for a refund of the assessment. The
6 refund application shall be accompanied by a copy of the record of the assessment on the sale.
7 The council shall refund the amount of the assessment collected within sixty days of receiving
8 a valid refund application.

9 Section 14. The council, to inform the seller, shall develop and disseminate information and
10 instructions relating to the purpose of the sheep assessment and manner in which refunds may
11 be claimed, and to this extent shall cooperate with government agencies, state and federal, and
12 private businesses engaged in the purchase of sheep.

13 Section 15. The assessment levied pursuant to this Act on each head of sheep sold does not
14 apply to sheep owned by a person who certifies that the person's only share in the proceeds of
15 the sale of the sheep is a sales commission, handling fee, or other service fee.

16 Section 16. The assessment levied pursuant to this Act on each head of sheep sold does not
17 apply to sheep owned by a person who:

- 18 (1) Certifies that the person acquired ownership of sheep to facilitate the transfer of
19 ownership of the sheep from the seller to a third party;
- 20 (2) Establishes that the sheep were resold not later than ten days from the date on which
21 the person acquired ownership; and
- 22 (3) Certifies that the assessment levied upon the person from whom the person purchased
23 the sheep, if an assessment was due, has been collected and remitted, or will be
24 remitted in a timely fashion.

25 Section 17. Any person seeking an exemption from the assessment under section 15 or 16

1 of this Act shall provide the collecting person with a statement of certification of exemption on
2 a form approved by the council. A copy of the statement of certification of exemption shall be
3 forwarded, upon request, by the collecting person to the council. The council shall promulgate
4 rules pursuant to chapter 1-26 to specify procedures and forms associated with such exemptions
5 from the assessment.

1 **BILL HISTORY**

2 1/22/98 First read in Senate and referred to Agriculture and Natural Resources. S.J. 163

3 1/29/98 Scheduled for Committee hearing on this date.

4 1/29/98 Agriculture and Natural Resources Deferred to another day.

5 2/5/98 Scheduled for Committee hearing on this date.

6 2/5/98 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 5, NAYS 4.

7 S.J. 349

8 2/9/98 Tabled amendment. S.J. 392

9 2/9/98 Senate Do Pass Amended, Passed, AYES 28, NAYS 5. S.J. 392

10 2/10/98 First read in House and referred to Agriculture and Natural Resources. H.J. 533

11 2/17/98 Scheduled for Committee hearing on this date.

12 2/17/98 Scheduled for Committee hearing on this date.

13 2/17/98 Agriculture and Natural Resources Deferred to another day.

14 2/19/98 Scheduled for Committee hearing on this date.

15 2/19/98 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 8, NAYS 5.

16 H.J. 773